IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6489 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RANJANBEN A CHAUHAN

Versus

CHIMANLAL R VAGHRI

Appearance:

1. Special Civil Application No. 6489 of 2001

MR A.M.Dagli for Petitioner

MR PH PATHAK for Respondent

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 07/02/2002

ORAL JUDGEMENT

The present petition is preferred by the Gujarat State Road Transport Corporation (hereinafter referred to as "the Corporation") against the award dated 27.3.2001 passed by the Labour Court at Kalol in Ref(LCK) No.455/93 whereby the respondent-workman is ordered to be reinstated in service by substituting the penalty of

stoppage of increment for three months with future effect.

2. The facts leading to the present petition are that the respondent-workman was working as a Conductor with the petitioner-Corporation since 1970. The default card of the respondent-workman shows that (i) on 5.10.1974 he was imposed penalty of withholding increment for three months for the misconduct of not charging ticket from one passenger on the route of Jodiya-Tharad, (ii) On 22.10.74 again he was imposed penalty of withholding of increments for three months for misconduct of not preparing way bill as required, (iii) On 21.3.75 the increment was withheld for three months by way of penalty for the misconduct of not issuing tickets to three passengers though the amount was collected, (iv) vide case No.144/75 the respondent-workman was imposed penalty of withholding of three increments with future effect for not issuing ticket to passenger though the amount was collected by him, (v) vide Case No.278/76 increments were withheld for six months by way of penalty for the misconduct of not collecting fare and not issuing ticket for one passenger on the route of Palanpur-Tharad, (vi) vide Case No.277/76 one increment was withheld by way of penalty for not collecting fare and not issuing ticket to one passenger on the route of Ahmedabad-Tharad, (vii) vide Case No.78/80 penalty of withholding one increment for three months was imposed for the misconduct of remaining absent from 26.12.1979 to 10.1.1980 without obtaining prior permission, (viii) vide Case No.370/81 the respondent-workman was imposed the penalty of withholding increment for six months for the misconduct of not accepting the duty allotted to him on 25.8.80 and left the duty on his own, (ix) vide Case No.45/81 the penalty of withholding increment for six months with future effect was imposed for misconduct of not remaining present on duty on 17.12.1980 at the scheduled time, (x) vide Case No.104/82 the penalty of dismissal from service was imposed on the respondent-workman for the misconduct of remaining absent without obtaining prior leave for the period from 31.12.1981 to 17.1.1982, however, it appears that thereafter during the departmental appeal proceedings the respondent workman was taken back in service as stated by Mr.Dagli appearing for the petitioner-Corporation. (xi) Vide case No.278/83 the penalty of withholding of increment for three months was imposed on the respondent-workman for the misconduct of not collecting fare and not issuing ticket to one passenger while on duty on 1.7.83, (xii) vide Case No.479/90 penalty of withholding increment for two months was imposed on the respondent workman for the misconduct

of not issuing ticket to one passenger and not collecting fare while on duty over the route of Kalol-Nandasan, (xiii) vide Case No.271/78 three increments were withheld with future effect by way of penalty for the misconduct of not depositing the left out items of passengers when the respondent workman was on duty on 17.5.78 on Ahmedabad-Tharad route, (xv) vide Case No.284/91 penalty of withholding one increment with future effect was imposed upon the respondent-workman for the misconduct of not remaining present on duty without obtaining prior sanction from 24.9.91 onwards.

Lastly, for the period from 26.9.92 to 12.11.1992 the respondent workman remained absent without obtaining prior leave of the competent authority of the petitioner Corporation. Ultimately, for the last incident of remaining absent from 26.9.92 to 12.11.1992 the departmental inquiry was conducted by the petitioner corporation and it worthwhile to note that during the aforesaid period vide letter dated 28.10.1992 the petitioner corporation had called upon the respondent workman to resume duty , however, he did not make any attempt to join duty. Not only that but the respondent workman did not participate in the departmental inquiry and ultimately the authority concerned was compelled to proceed with the departmental inquiry exparte. The charges were found proved and thereafter show cause notice for imposing penalty was issued and ultimately the disciplinary authority found proper to impose penalty of dismissal. Against the said order of dismissal it appears that the respondent workman raised dispute under the Industrial Disputes Act (hereinafter referred to as "the Act").

3. Before the labour court, the contentions raised by the respondent workman were that by the officer of the petitioner corporation by way of victimisation and by changing the root on duty he was being harassed and he was asked to sit in the office. It was the contention of the workman that since he had filed an application against the Corporation under Payment of Wages Act, by way of victimisation without making payment inquiry is held and he has wrongly been dismissed from service without paying even compensation etc. On behalf of the petitioner, a reply was filed containing the above referred past record of the workman and it was also interalia contended at the time of hearing by the petitioner corporation before the Labour court that the post which was held by the respondent workman was that of a Conductor and because of his absence and not remaining present on duity the corporation was umpteen number of

times not only faced various administrative difficulties but the passengers at large were also required to suffer and that it had caused financial implications since those roots were required to be changed, and hence, the imposition of penalty of dismissal is legal and valid. The labour court ultimately adjudicated the issue and it is worthwhile to note that at para 4 of it award it has been mentioned that the workman has admitted the departmental proceedings. However, in his contention the findings of the inquiry officer are perverse. The labour court ultimately found that the charges are proved during the course of departmental inquiry and the findings of the inquiry officer are proper and the labour court did not accept the contention of the respondent workman that the findings of the inquiry officer are perverse. However, the labour court found that on account of absence, the imposition of penalty of dismissal is harsh and therefore ultimately the labour court under purported exercise of powers under section 11A of the Act substituted the penalty by withholding three increments with future effect and directed the petitioner corporation to reinstate the workman in service. It is against this award passed by the labour court the petitioner corporation has preferred the present petition before this court.

4. Mr.Dagli, learned advocate appearing for the petitioner corporation has raised the contention that the labour court has committed error apparent on the face of the record in as much as once it has come to conclusion that the findings of the inquiry officer are proper, keeping in view the past record of the respondent workman, the authorities were perfectly justified in imposing the penalty of dismissal from service. In furtherance of his argument, Mr.Dagli has also pointed out that before the Labour court written submissions were made in which it was interalia pointed out to the court that the respondent workman was working as a Conductor and on account of the post which was held by him since he had remained absent without obtaining prior leave there were number of administrative problems and not only that the trips which were scheduled were required to be cancelled and it had not only resulted into financial implications of losing revenue but the passengers had also suffered a lot. In his submission since the penalty is imposed for about 14 times for various misconducts including the misconduct of remaining absent and others, the disciplinary authority was justified in taking serious view of the matter and therefore the labour court ought not to have substituted the penalty.

5. Mr.Pathak, learned advocate appearing on behalf of respondent-workman contended that the finding of the inquiry officer is perverse in as much as in his contention though the respondent-workman was available for discharging his duty he was not permitted to join the duty and as a result thereof it can not be said that he had remained absent without obtaining prior leave. Mr.Pathak further contended that when the labour has exercised the discretion in exercise of powers under the Industrial Disputes Act and substituted the penalty, the scope of judicial review before this court is very limited and even when two views are possible the court should not interfere with exercising powers under Article 227 of the Constitution.

6. Before I deal with the contentions raised by Mr.Dagli, learned advocate appearing for the petitioner corporation, it is necessary to deal with the contention of Mr.Pathak that the finding of the inquiry officer is perverse to the record of the case and therefore he should be permitted to agitate the contention before this court and though the workman was available for discharging duties he was not permitted to do so by petitioner corporation. I can not accept the submission made by Mr.Pathak for the reason that the labour court in the award itself has recorded the conclusion that the inquiry is strictly legal and valid and the charges are proved and even the factum of holding inquiry or any breach of principles of natural justice is not contended by the workman before the labour court but the labour court had arrived at a definite conclusion that the inquiry officer has given findings which are proper. The workman has not challenged the legality and validity of the award contending that the finding of the labour court in the aforesaid award and now it is not open to the respondent workman to contend that the finding of the labour court regarding the inquiry should be permitted to be challenged. Another reason for not permitted Mr.Pathak to raise such contention is that even in the award of the labour court at para 2 the contentions of the workman are noted in which it was not even contended by the workman before the labour court that though he was available for discharging his duties the corporation has not permitted him to discharge the duty and therefore there is no case of absenteeism. The question which is required to be considered by the court is when the labour court has arrived at a conclusion that the departmental inquiry is held in a proper manner and that the findings of the inquiry officer are proper whether the labour court was justified in substituting the penalty more particularly when the petitioner-employer had imposed

penalty of dismissal in view of the past conduct and past history of imposition of various penalties upon the respondent-workman. If we see the award of the labour court, the reasonings are given only to the extent that on account of misconduct of remaining absent penalty of dismissal would result into economical death of the employee and therefore the labour court has come into conclusion that the penalty of dismissal is improper and it has substituted the penalty of dismissal by withholding of three increments.

7. Mr.Dagli appearing for the petitioner-corporation relied upon the judgment of the Division Bench of this court reported in the matter of Gujarat State Road Transport Corporation vs Kachraji Motiji reported in 1993(1) GLR 302 wherein the Division Bench of this court has taken the view that the power under section 11A has to be exercised judicially and the Industrial Tribunal or the labour court can interfere with the decision of the management under section 11A of the Act only when it is satisfied that the punishment imposed by the management is highly disproportionate to the degree of guilt of the workman concerned. It is observed by the Court that "misappropriation, if held established, would be a major misconduct and normally dismissal order passed by the competent authority should not be interfered with by the labour court or the Industrial Court under section 11A of the Act."

8. Mr.Dagli also relied upon the decision of the Division Bench of this court in the matter of Maganbhai L.Chauhan vs Divisional Controller, GSRTC reported in 1991(1) G.L.H. 527 wherein the Division Bench of this court while considering the case of absenteeism of a Conductor has taken the view that "the GSRTC is for public services, if an employee does not join duty, bus service is likely to be affected on a particular route, thus on such responsible position if an employee remains absent without prior information, can not be tolerated." In the said judgment the Division Bench while upholding the order of the disciplinary authority of imposing penalty of dismissal upon the conductor also take into account the past record of remaining absent for umpteen number of times. Therefore, in the submission of Mr.Dagli in view of the judgment of the Division Bench of this court, the labour court ought not to have interfered with the decision of imposing penalty by the disciplinary authority. Mr.Dagli has further relied upon the judgment of the Apex Court in the matter of Punjab & Sind Bank vs Sakattar Singh reported in (2001) 1 SCC 214. It was a case where the High Court had reversed the decision of

the Bank of terminating the services of its employee for remaining absent without obtaining prior leave.

9. Mr.Pathak appearing on behalf of the respondent workman has relied upon the decision of the Division Bench of this court in the matter of R.M.Parmar vs Gujarat Electricity Board reported in 1982(1) GLR 352 for pointing out to the court as to how the powers under section 11A of the Act can be exercised by the labour court or the Industrial Tribunal while substituting the penalty. In the submission of Mr.Pathak the guidelines are laid down by the Division Bench of this court and in his submission the labour court has rightly substituted the penalty by exercising powers under section 11A of the Act. Mr.Pathak has further relied upon the judgment of this court in the matter of Sardarsingh Devisingh vs The District Superintendent of Police, Sabarkantha District reported in 1985(2) GLR 1368 where a constable had remained absent for 150 days without obtaining leave and this court had taken the view that the penalty of dismissal was harsh. He has also relied upon the judgment of this court in the matter of Gujarat State Road Transport Corporation vs Abdul Karim I.Shaikh reported in 2000(4) GLR 3130 and also relied on the decision of this court in the matter of Gujarat State Road Transport Corporation vs Madhavsingh B.Parmar reported in 2000(4) GLR 3090 wherein in his submission this court reiterated the same principle as earlier laid down in the judgment in the matter of Sardarsingh Devisingh(supra) to the effect that the punishment of dismissal in the case of absenteeism is too harsh. In the case of Abdulkarim I.Shaikh(supra) , it was a case of absenteeism for three months and inspite of the same this court while modifying the award of the labour court maintained the order of reinstatement with backwages of 25% instead of 50%. In the submission of Mr.Pathak in the case of Madhavsingh B.Parmar (supra) this court has taken the view that it would be harsh to take earlier circumstances while imposing punishment and in his submission this court did not maintain the order of dismissal.

10. In none of the cases cited by Mr.Pathak the facts are identical to the facts of the present case. In the case before this court 14 times serious misconducts are committed and it is worthwhile to note that at one point of time the penalty of dismissal from service was also imposed on account of misconduct committed by remaining absent from 13.12.1981 to 17.1.82 vide Case No.104/82. It is true that while considering the question of imposing penalty on the ground of absenteeism the nature

of duty being discharged by the person concerned has to be taken into consideration, but at the same time, it can not be always said that merely because a person had remained absent punishment of dismissal is uncalled for. For example, a watchman remains absent from duty for a single day and as a result thereof if circumstances which may be considered as serious misconduct have happened due to absence it would attract penalty of dismissal whereas a peon remaining absent for few days may not attract the punishment of dismissal if he was not discharging responsible work at the relevant point of time. I am of the view the principle laid down by the Division Bench of this court in the matter of Maganbhai L.Chauhan(supra) would apply to the facts of the present case and as laid down by the Division Bench of this court the GSRTC is for public service and if an employee does not join duty, bus service is likely to be affected on a particular route and the post of a Conductor so far as the bus service on a particular route is concerned is a responsible post and therefore the the conductor remaining absent without obtaining prior leave is a serious misconduct. Inspite of the same the authority in the past has pardoned the workman for number of misconducts including remaining absent by imposing lesser punishments. At point of time, even the penalty of dismissal was imposed though the same, subsequently, in departmental proceedings was substituted. From the default card copy whereof is annexed at annexure "I" on page 19 & 20 to the petition wherein various misconducts and imposition of penalty are narrated clearly shows that the respondent workman who was working as a Conductor is in the habit of remaining absent without obtaining prior sanction. It may be stated that mr.Pathak raised objection against consideration of default card mainly on the ground that the charges were not of habitually remaining absent. I can not accept the contention of Mr.Pathak because it is an admitted position that the default card was also on the record of the labour court.

11. So far as the second submission of Mr.Pathak is concerned, even if it is not specifically mentioned in the charges about habitually remaining absent, while imposing penalty, it is always open to the disciplinary authority to take into consideration the past record of misconduct for imposing penalties. Mr.Pathak has further raised contention that even if the disciplinary authority while imposing penalty has not taken into consideration the past record and has only considered the single incident of remaining absent for the period from 26.9.92 to 12.11.1992. I am afraid that such contention of Mr.Pathak can not be accepted. That the disciplinary

authority while passing the order imposing penalty is not acting as a judicial authority and the considerations which have weighed with the authority in the capacity of an employer are not required to be narrated as sought to be canvassed by Mr.Pathak. No prudent employer while imposing penalty upon the employee ignore the past record of the employee. Therefore, the contention of Mr.Pathak can not be accepted. The fact remains that the default card is the part of service record and the petitioner corporation produced before the labour court which shows that 14 times the punishments have been imposed upon the respondent-workman. Inspite of the same, he has continued to show his absenteeism without obtaining prior leave. Not only that but during the period 26.9.92 to 12.11.1992 the workman was called upon by the petitioner to join duty, but he has not resumed the duty. In my view, the labour court has committed error apparent on the face of record in as much as when such material is already there on record about imposition of penalty for 15 times upon the workman concerned, the last incident of remaining absent could not have been lightly considered for the purpose of substituting penalty. The approach of the labour court is not only erroneous but is perverse to the case on record. Even if we keep in mind the principles laid down by the Division Bench of this court in its judgment in the case of R.M.Parmar (supra) no employee with prudence would arrive at different conclusion than that of imposing penalty of dismissal upon the workman who has suffered penalty for 14 times for various serious misconducts including one of dismissal from service. Therefore, it can not be said that the labour court has, in any manner, properly exercised the powers or judicial discretion and on the contrary, I am of the view that the labour court ought not to have interfered with the decision of the corporation which is a public corporation of imposing penalty of dismissal upon a Conductor who has umpteen number of times remained absent without obtaining prior leave and on account of his absenteeism the public service of providing transportation would suffer.

12. Mr.Pathak has relied upon the judgment of the Apex Court in the matter of Mohd Yunus vs Mophd Mustaqim reported in AIR 1984 SC 38 and in the matter of Roshan Deen vs Preetilal reported in (2002) 1 SCC 100 to contend that the scope of judicial review of this court under Article 227 is very limited and when the labour court has exercised judicial discretion this court should not interfere with such decision of the labour court. I can not accept the contention of Mr.Pathak for the simple reason that I am of the view that no employer in a matter

like this would come to a conclusion other than imposing penalty of dismissal and therefore it can not be said that the labour court has rightly exercised its jurisdiction and on the contrary it has exceeded its jurisdiction and therefore this contention of Mr.Pathak can not be accepted.

13. In the result, petition is allowed. The award, dated 26.4.2001 of the labour court, Kalol in Ref(LCK)No.455/93 is quashed. Rule is made absolute. There shall be no order as to costs.

14. At this stage Mr.Pathak appearing for the respondent workman states that since the workman is already reinstated in service pending this petition, the operation of this judgment may be stayed for some time. Considering the facts and circumstances of the case, the operation of this judgment shall remain stayed for a period of four weeks from today.

7.2.2002 (JAYANT PATEL,J)